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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 12 February 1992, at 10 a.m.

Chairman: Mr. SOLT (Hungary)

later: Mr. ENNACEUR (Tunisia)

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Statement by the Chairman of the African Commission on Human and Peoples' Rights

Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular:

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The meeting was called to order at 10.10 a.m.

STATEMENT BY THE CHAIRMAN OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

1. The CHAIRMAN welcomed the Chairman of the African Commission on Human and Peoples' Rights and invited him to address the Commission.

2. Mr. BADAWI (African Commission on Human an Peoples' Rights) said that the African Commission had been founded in 1987 to supervise implementation of the African Charter on Human and Peoples' Rights. With the drafting of the African Charter, freedom, equality, justice and respect for human dignity had become the ultimate objectives of the African nations. The Commission was a cornerstone in United Nations efforts to cooperate with regional human rights organizations on encouraging respect for human rights.

3. He expressed his gratitude to the Government of Tunisia for acting as host to the eleventh session of the Commission on 2 to 9 March 1992. The Commission called upon other African countries to offer to hold future sessions, since they served to increase awareness of its activities and gave individuals a forum for airing complaints of human rights violations. He thanked the Governments of Senegal, Gabon, the Libyan Arab Jamahiriya, Nigeria and Egypt for having acted as hosts for previous sessions and also the Government of Gambia, where the headquarters of the Commission was located.

4. The Commission promoted cooperation with non-governmental organizations (NGOs), many of which had been given observer status, and played a pivotal role in spreading awareness for human rights concerns. The Commission appreciated the support of the NGOs, in particular Amnesty International, which had published pamphlets on the African Charter, the International Commission of Jurists, which had held a seminar on the African Charter in October 1991, and the International Committee of the Red Cross, which had contributed to its work. He appealed to the Centre for Human Rights to support the NGOs in Africa, which faced difficulties owing to a lack of resources.

5. The Commission discussed in public meetings reports on legislative and other measures taken by Governments to implement the Charter. At its tenth session, it had reviewed the reports of the Libyan Arab Jamahiriya, Rwanda and Tunisia and, at its eleventh session, it was to consider the reports of Egypt, Nigeria, Tanzania and Togo. The purpose was to help Governments meet their obligations under the African Charter. The Commission also heard in closed meetings allegations of human rights violations that had been referred to it. Another activity involved disseminating information on the African Charter.

6. At the eleventh session, discussion was to focus on the right to a fair trial for all detainees, and a seminar was to be held on the obligations of States to provide legal protection in line with the provisions of the African Charter. Seminars were also being planned on refugees and expatriates, in cooperation with the United Nations High Commissioner for Refugees.

7. Despite its own financial constraints, the Organization of African Unity had contributed to the work of the Commission. Voluntary support and donations were an important element in enabling the Commission to pursue its efforts, and in that context he expressed gratitude for the material and moral support of the Centre for Human Rights. Assistance had also been forthcoming from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the European Community and Swedish and Danish bodies. The Commission would continue to cooperate with the Commission on Human Rights and draw upon its experience.

8. African Governments were well aware that the protection of human rights was vital to stability and development on the African continent. There could be no development in Africa without respect for human rights and the rule of law and participation by the peoples of Africa in the governing process. Africa had chosen the path of democracy. It should be noted, however, that if Africa was lagging behind in the field of human rights, it was because of the long years of subjection to colonialism and apartheid.

9. Some African countries were in dire need of an operation such as that which was under way to help the Republics of the former Soviet Union. A large number of them were unable to meet their basic needs, and were doing their utmost to ensure that democracy prevailed.

10. The African countries were looking forward to the holding of the World Conference on Human Rights, and appreciated the great efforts being made by the Under-Secretary-General for Human Rights in that regard. They hoped that the Conference would make a contribution toward ensuring a bright future for mankind.

11. The African countries expressed their full support for the work being done by the Commission on Human Rights to put an end to human rights violations throughout the world. In that connection, he stressed the importance of establishing an early warning system that would make it possible to avert violations of human rights anywhere.

12. The international community must be prepared to rebuild South Africa in the aftermath of apartheid. Greater efforts would be necessary to rectify the various sectors that had suffered from that hateful practice and to bring about equality in South African society.

13. He praised the steps taken by the United Nations to alleviate the suffering of the Somali people.

14. Lastly, he expressed the hope that all nations, large and small, would continue to fulfil their obligations with regard to ensuring respect for human rights. It was necessary to build a world that was in accordance with the provisions of the Charter of the United Nations and based upon the rule of law.

15. Mr. Ennaceur (Tunisia) took the Chair.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (continued) (E/CN.4/1992/13-16, 17 and Add.1, 18 and Corr.1 and Add.1, 19/Rev.1, 20, 62 and 63; E/CN.4/1992/NGO/4 and 9; E/CN.4/1991/17, 20 and Add.1 and 66; E/CN.4/1991/NGO/22; E/CN.4/Sub.2/1991/9, 26, 28/Rev.1, 29 and 30 and Add.1-4; A/46/46, 618 and Corr.1 and 703; A/C.5/46/4; A/RES/46/110)

16. Mr. CHEN Weidian (China) said that his Government's position had always been one of firm opposition to torture. China's approach had been guided by the rule of law, which was binding and strict and which required punishment of violations. All citizens were equal before the law. The legal provisions adopted in China on the prohibition of torture were in conformity with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Constitution reaffirmed the prohibition of torture, referred specifically to the principle of the protection of the rights of the individual and clearly stipulated that the dignity of the individual was inviolable.

17. No citizen could be arrested except with the approval of the people's prosecutor or by a decision of the people's court, and arrests must be made by a public security organ. Unlawful detention or deprivation or restriction of a citizen's rights by detention or other means was prohibited. The residence of the individual was inviolable: unlawful search of a person or intrusion into a citizen's residence was illegal. Verbal abuse, libel, accusation or false incrimination were forbidden.

18. The use of torture to extort a confession, false accusation, unlawful detention, public surveillance, search of a person, intrusion into a person's residence, retaliation, frame-ups, malpractice for private gain, physical punishment and mistreatment of prisoners or internees, unlawful deprivation of the right to religious freedom and beliefs, violation of the customs of minority nationalities and perjury were all punishable by prison sentences. Whoever caused injury or disability to a person through corporal punishment would receive a heavy sentence. Any prison official who subjected prisoners or internees to corporal punishment and abuse could be sentenced to up to three years in prison and to between 3 and 10 years in aggravating circumstances. Legislation also outlawed beatings, mistreatment and humiliation of prisoners and using abusive language towards them.

19. A comprehensive set of procedures regulating criminal prosecution had been established in line with the Constitution and the relevant provisions of Chinese criminal law. It applied to all criminal cases, including those involving the rights and human dignity of citizens.

20. The rights of prisoners during their term of imprisonment were protected by law. Their daily sustenance and health care were provided for, and they also enjoyed the right to safe working conditions, the right to counsel and the right of appeal, the right to personal safety and freedom from degrading treatment and the right to file charges and make accusations.

21. In recent years, allegations had been heard in some quarters to the effect that China did not provide for the legal protection of human rights; that was irresponsible and malicious propaganda. In China, the purpose of imposing a sentence was not simply to punish, but also to rehabilitate, through education and reform, so that prisoners could become useful members of society. A system of checks and balances ensured that the judiciary, the prosecutor's office and the public security organs did not commit abuse of power. Legal supervision of criminal proceedings, prisons and reform-through-labour institutions had been strengthened. Cases involving corporal punishment and degrading treatment of inmates were promptly investigated. Agencies had been set up to deal with any criminal activities by State officials that violated the democratic rights of citizens. Thus, every citizen was entitled by law to the protection of his legitimate rights and to compensation when those rights were violated.

22. The State news media also played a supervisory role. Newspapers, magazines, radio and television and other news media could expose cases of torture. Publicizing such cases helped underscore the importance of prohibiting torture and other degrading treatment or punishment, and the news media thus served to educate people about the law and monitor the activities of State officials.

23. The facts he had mentioned showed that the legal measures taken in China to prohibit torture were effective and had yielded concrete results. Owing to the important role that the public security organs and the judiciary played in safeguarding civil rights and freedoms, China had one of the lowest rates of criminal cases and lowest crime rates, 2 per thousand and 0.6 per thousand, respectively, in 1990, compared to 60 per thousand and 20 per thousand, respectively, in certain Western countries.

24. Mr. Solt (Hungary) resumed the Chair.

25. Mr. MARKIDES (Cyprus) said that, despite the statement in article 5 of the Universal Declaration of Human Rights that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment", torture seemed to have acquired alarming proportions in countries around the globe, especially during the second half of the twentieth century. It was only after the moral awakening of mankind and the development of a concept of human rights and fundamental freedoms based on the recognition of the inherent human dignity, at both the national and international level, that the practice of torture had been abolished as a means of interrogation under various national systems. Unfortunately, the world still had a long way to go before torture was abolished as a means of achieving political goals.

26. In recent years, the work of the international community on the question of the human rights of all persons subjected to any form of detention or imprisonment had covered a wide spectrum of such rights, extending from standard-setting to the establishment of mechanisms for overseeing the implementation of those rights. In that context, mention could be made of the initiation of the European Committee on the prevention of torture and inhuman or degrading treatment or punishment (of which Cyprus was a member); the gradual, though slow, increase in the number of States ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Cyprus had ratified it on 18 July 1991); the adoption by the General Assembly of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and the draft Declaration on the protection of all persons from enforced disappearance, which, he hoped, would be approved by the Commission at its current session.

27. It was sad to note the statement by the Special Rapporteur on questions relevant to torture in his report (E/CN.4/1992/17, para. 288) that "in spite of all the successes which have been achieved in the fight against torture ... torture continues apace. The world can no longer avoid the conclusion that, while successes have been registered at the international level, only failures can be recorded at the national level". It was extremely disquieting that, as confirmed in the Special Rapporteur's report, torture and other cruel, inhuman or degrading treatment or punishment were apparently still being practised systematically in a large number of countries.

28. As for the questions asked in the report as to how the gap between international success and national failure should be bridged and how the paper formulas should be transformed into rules of conduct, the Special Rapporteur himself provided some answers and made some recommendations. His delegation agreed with them and believed that they should form guidelines for the common action to be taken by the international community and by individual Governments to eradicate torture in all its forms.

29. His delegation was also concerned at the number of cases of disappearances transmitted to the Governments concerned by the Working Group on Enforced or Involuntary Disappearances. In 1991 alone, it had received about 17,000 individual reports of disappearances. It was hardly necessary to refer to the probable motives behind such practices or to the sufferings of those who had disappeared. What his delegation wished to stress was the absolute need for the international community and the Commission to continue to lend their full support to the Working Group and to strengthen it.

30. As for the question of missing persons in Cyprus, which his delegation had always regarded as a purely humanitarian issue unconnected with the overall solution of the Cyprus problem, he said that, despite the Commission's latest resolution on the question of human rights in that country (1987/50), and other resolutions previously adopted by the United Nations, more than 17 years after the invasion of Cyprus the untold suffering of the relatives of missing persons continued. It was disappointing that the Committee on Missing Persons in Cyprus, under the auspices of the United Nations and in existence since 1981, had not yet obtained the expected results and had been unable to alleviate the sufferings of the relatives of missing persons.

31. His delegation hoped that the Committee's ability to deal effectively with the matter would be strengthened so that results would soon be achieved. All concerned should assist the Committee in obtaining complete information on the missing persons and all witnesses should cooperate fully with the investigations. His Government, which had always been in favour of the effective functioning of the Committee, would continue to cooperate with a view to resolving that purely humanitarian issue.

32. A complete investigation was one in which every effort was made not only to ascertain whether the missing person was alive or dead but, if he was determined to be dead, to locate the burial place and/or the body. In that regard, General Assembly resolution 3220/29 on assistance and cooperation in accounting for persons who were missing or dead in armed conflicts was quite close to the international community's expectations.

33. Ms. PENNEGARD (Observer for Sweden) said that her Government had, on many occasions, expressed its firm support for the machinery created by the Commission to achieve its objectives. Reports were a vital component of that machinery and focused the attention of the international community on countries where gross violations of human rights were alleged to take place. Such reports constituted a valuable source of information and served as a means of drawing the attention of public opinion to situations and circumstances that needed to be rectified. Her delegation hoped that sufficient resources would be allocated to the Centre for Human Rights to ensure that the high quality of those reports was maintained.

34. Her Government attached great importance to the newly-established Working Group on Arbitrary Detention. It strongly endorsed the Working Group's methods of work as well as the principles it would apply in examining the various cases forwarded to it.

35. Since its establishment 12 years previously, the Working Group on Enforced or Involuntary Disappearances had proved effective in drawing international attention to that horrifying practice. Her delegation hoped that the Working Group's efforts would be supported by the Commission's approval without a vote at its current session of the draft Declaration on the protection of all persons from enforced disappearance. It also hoped that the Declaration would be adopted by the General Assembly later in the year.

36. During 1991 alone, the Working Group had received about 17,000 individual reports of disappearances and had transmitted 4,800 cases to 25 Governments. In that connection, her delegation noted that the urgent action procedure adopted by the Group had a clarification rate three times as high as in cases processed through the ordinary procedures. As for the prominent role played by "death squads", Governments frequently denied responsibility for their operation and claimed to be powerless to prevent them, but no Government within whose jurisdiction "death squads" operated had yet taken vigorous action to curb their activities. She agreed with the Working Group that Governments had an obligation not only to condemn such appalling operations but also to take efficient measures to eradicate them.

37. The Working Group had provided a useful report on the visit of three of its members to Sri Lanka (E/CN.4/1992/18/Add.1). Her delegation appreciated that Government's collaboration with the Group, the more so in that pending cases of disappearances in Sri Lanka were more numerous than in any other country. The report demonstrated that it was not feasible to separate disappearances from overall violations of human rights or from an ethnic conflict that had engendered it. Although the violence was continuing, recent information indicated a slight improvement in the situation. She called on the Government of Sri Lanka to give careful consideration to the recommendations in the report and undertake appropriate action. A follow-up visit by the Working Group should be encouraged.

38. As for the excellent report by the Special Rapporteur on questions relevant to torture, (E/CN.4/1992/17), the ban on torture, which could never be justified under any circumstances, was absolute but the practice was still widespread, as shown by the alarming number of communications received by the Special Rapporteur. The fight against torture must be continued relentlessly, both nationally and internationally. There had been a number of achievements at the international level but many obstacles remained to be overcome. In that context, her Government added its voice to those who believed that the time had come for the Commission to establish an open-ended working group to explore the idea of an optional protocol to the Convention against Torture.

39. Her delegation fully endorsed the Special Rapporteur's recommendations and strongly supported the suggestion that incommunicado detention should be declared illegal, as it often led to torture.

40. She welcomed the visit of the Special Rapporteur to Indonesia and East Timor and took note of his conclusion that it was questionable whether the respect for basic human rights, which were guaranteed by the Indonesian State philosophy and legislation, was actually fulfilled (E/CN.4/1992/17, para.78).

41. Her Government attached great importance to the United Nations Voluntary Fund for Victims of Torture and had contributed to it since 1981. In 1991, it had provided approximately US$ 170,000, to the Fund, and the same amount would be given in 1992. For 1993, it intended to double its contribution. It urged other Governments to contribute, or to increase their contributions, to the Fund.

42. Mr. REYN (Observer for Belgium) said that one of the basic principles of a civilized and democratic society was respect for the physical and moral integrity of the human person. While the principle of the prohibition of torture had been recognized universally, its application left a great deal to be desired. Even if torture was universally denounced as one of the most odious violations of human rights, it remained a practice found in all areas of the world.

43. Numerous international instruments, declarations and codes prohibited the practice of torture. Unfortunately, it must be recognized that many Governments did not respect their international obligations and the phenomenon of torture still continued to occur.

44. For seven years, the Special Rapporteur on questions relevant to torture had been presenting an annual report. As always, the current report was a very carefully prepared and impartial document which encouraged Governments to follow the Special Rapporteur's recommendations. The mandate of the Special Rapporteur was of undeniable importance, particularly since the monitoring machinery established by the Convention against Torture was not yet universally applicable. In view of the complementarity of the mandates of those various mechanisms, his delegation welcomed the periodic consultations that took place between the Special Rapporteur and the Committee against Torture.

45. In his opinion, the various parts of the monitoring machinery should be strengthened. In particular, it would be useful to establish, through an optional protocol to the Convention, a system whereby periodic visits would be made by independent experts to places of detention or imprisonment. The Special Rapporteur had on several occasions recommended the establishment of such a system of visits, which was one of the most effective ways of preventing torture. In that connection, he referred to the European Committee for the prevention of torture, which had begun its work on 13 November 1989 and which could be a source of information for other regions. Moreover, at the world level, the International Committee of the Red Cross paid visits to places of detention. That important activity generally produced positive results and was frequently the only hope for persons subjected to arbitrary detention or torture.

46. Prevention of torture was the key word, and the programmes of advisory services could help Governments which thought that they were incapable of putting an end to that ignominious practice by themselves. Where the authorities themselves practised torture, the judicial system had a key role to play in protecting the fundamental rights of the citizen. However, any standard-setting or institutional effort would remain fruitless unless differences in behaviour at the national and international levels disappeared. All segments of society had to recognize their responsibility in that regard and act accordingly.

47. Close cooperation between the Special Rapporteur and the Government concerned could take the specific form of on-the-spot visits. Experience had shown the usefulness of such visits, not only those of an advisory nature as in the case of Indonesia, but also, and more particularly, those which led to an investigation into specific cases of torture.

48. It was encouraging to note that, over the years, a more open attitude on the part of Governments had developed with regard to visits by the Special Rapporteur, which provided an occasion for an in-depth exchange of views with the local authorities on measures taken or to be taken to prevent the practice of torture. Such visits could only make a real contribution to the fight against torture, however, if the Governments concerned bore in mind the advice given and accepted the Special Rapporteur's recommendations.

49. In view of the fact that national procedures were sometimes complex and required a longer period to react in a satisfactory manner to allegations of torture considered by the Special Rapporteur, his delegation took the view that a mandate of at least three years would enable the Special Rapporteur

to obtain from Governments substantial replies to allegations of torture. Moreover, he would be in a better position to help the responsible authorities to correct existing situations and to avoid the errors of the past.

50. His delegation reaffirmed its full support for the work of the Special Rapporteur and for the general recommendations contained in his report (E/CN.4/1992/17 and Add.1). It believed that a thorough study of those recommendations would help to raise the level of awareness of the international community and persuade Governments to assume their responsibility and take the necessary measures to fight against the phenomenon of torture.

51. In conclusion, he stressed the importance his delegation attached to the approval by the Commission at its current session of the draft Declaration on the protection of all persons from enforced disappearance.

52. Ms. GANEM (Movement against Racism and for Friendship among Peoples) said that she wished to draw attention to the fact that her organization had for many years denounced the discrimination and violence to which ethnic minorities were subjected in the United States. Thus, in March 1980, her organization, together with a French lawyers' trade union, had submitted to the United States Department of Justice a petition drawing attention to the cruel, inhuman or degrading treatment inflicted on prisoners because they belonged to ethnic minorities or on whites who had been convicted of helping those minorities. To date, there had been no reply to that petition.

53. In the United States, blacks represented 46 per cent of the persons in prison whereas they accounted for only 12 per cent of the total population of the country. Blacks, Indians, Puerto Ricans, Chicanos, and Hispanics together constituted 60 per cent of the prison population. It was thus legitimate to conclude that there was a system of discriminatory criminal justice which unjustly made criminals of men and women imprisoned for their views, for their active participation in movements for freedom and social justice, and for their fight against racism and in favour of civil rights.

54. Some of those prisoners were victims of the counter-intelligence programme waged by the FBI from 1956 to 1971 with the aim of crushing all dissident movements in the United States, particularly the leaders of black and Indian organizations fighting for the recognition of their cultural and national identity. Many of them had been falsely arrested on trumped-up charges and were subsequently depicted to the public by the press and the criminal justice system as murderers, thieves, drug addicts and rapists, in an attempt to deny them the support of solidarity movements.

55. Such prisoners included Geronimo Pratt, who was serving a life sentence for murder despite convincing proof of his innocence; Leonard Peltier, also falsely accused, who had so far spent 14 years in prison and, though nearly blind, was denied the necessary medical care, and 14 Puerto Ricans currently serving long sentences for alleged crimes related to their country's struggle for independence. The last group included Alejandrina Torres, regarded as a national heroine in Puerto Rico, who had been the victim of physical and sexual abuse by her prison guards. Those men and women had become symbols of injustice and discrimination, punished for their convictions and for belonging to historically oppressed ethnic minorities.

56. Her organization called upon the Government of the United States, which was a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to respect the principles of the Charter and the Universal Declaration of Human Rights.

57. Mr. BEYA-BATAKALWA (Movement against Racism and for Friendship among Peoples) said that, for 30 years, the regime of President Mobutu had been noted for the acts of torture, enforced disappearances, and cruel and degrading treatment it inflicted on the people of Zaire. He himself was a survivor of the massacre of students that had taken place on the Lubumbashi University campus on the night of 11 to 12 May 1990 following a demonstration by students calling for the release of their detained colleagues and for the democratization of political institutions in Zaire.

58. The massacre had been perpetrated with inordinate brutality. Female students had been savagedly raped and their breasts cut off while male students had been bayoneted. In the subsequent trial, organized by the authorities to determine responsibility for the massacre, the principal perpetrators had been found not guilty by the judicial branch, which had displayed a total lack of independence and impartiality. The victims' families had not been allowed to claim the bodies and had been denied the right to organize funerals.

59. Such massacres, which were frequent in Zaire, constituted a method of preventing the emergence of a state of law, in which human rights and fundamental freedoms would be respected. The Government of Zaire had sought by every means to prevent the Special Rapporteur on summary or arbitrary executions from carrying out his mandate and investigating the massacres.

60. His organization urged the Commission to continue to condemn the inhuman practices of the Mobutu regime; to despatch to Zaire a group of experts to monitor the forthcoming elections; and to publish and disseminate to all Member States of the United Nations the Special Rapporteur's report on the tragic events that had taken place in his country.

61. Ms. NICHOLSON (Movement against Racism and for Friendship among Peoples) said that she was addressing the Commission on behalf of the voiceless victims of torture and cruelty. She had with her a little Iraqi boy, Amar Kanem, whose family had been killed at Basra, Iraq, in the spring of 1991, in a napalm bomb attack by the Republican Guards. He himself had been horribly mutilated and had been saved only through the medical care and hospitality he had received in neighbouring Iran, to which he had been smuggled.

62. The case of little Amar did not belong to history. The Republican Guards were continuing their genocidal attack against the Shiite communities in Iraq. The voices of those victims needed to be heard so that the international community might be stirred to action on their behalf and enforce respect for the Convention on the Prevention and Punishment of the Crime of Genocide.

63. Mr. SAMOURA (World Social Prospects Association) said that, on the threshold of the twenty-first century, the practice of torture continued to spread despite the existence of legal instruments designed to protect human rights.

64. With some very rare exceptions, democracy had not yet taken root in Africa. Certain African leaders, in order to strengthen their stranglehold on their peoples and prevent the emergence of the rule of law had adopted the one-party system. As a result, large numbers of citizens had fled their countries of origin to seek a better life elsewhere. Africa had thus become a continental concentration camp for the victims of torture and repression. It was high time that the non-governmental organizations North and South, began to help put a stop to that human haemorrhage in Africa in a crusade for the restoration of democracy.

65. The international community must recognize the duty to interfere in the internal affairs of any country in which serious violations of human rights, the foundations of that community, were occurring. Only thus could an end be put to the practice of torture and its victims treated and rehabilitated.

66. Instead of receiving lessons in human rights, however, Africa, particularly black Africa, should be giving them. It was a continent whose peoples had been denied their human rights through the painful experiences of slavery, apartheid and other more subtle forms of human rights abuse. There was thus an urgent need to rehabilitate the human being in Africa, to reaffirm his or her intelligence and generous sense of solidarity. If organized, Africans could build democracy, master technology and dominate, while respecting nature, thus rebuilding democratic societies in which the human rights of all were assured.

67. Mr. RETUREAU (World Federation of Trade Unions) said that, despite the existence of international instruments and mechanisms for the protection of trade union rights, the rights of large numbers of trade unionists continued to be abused.

68. In the Sudan, in its zeal to create a trade union movement based on the so-called Islamic model, the Government had launched a witch-hunt against trade unionists. Frequent reports had been received of cases of torture, arbitrary detention and even executions of trade union activists.

69. In Colombia, Guatemala and Peru, paramilitary groups continued to operate, and Governments seemed incapable of guaranteeing the human rights, particularly the right to life, of trade union activists, who continued to be victims of enforced disappearances and torture. Few of the perpetrators were ever brought to justice and, during the previous year, hundreds of such crimes had been committed. In Colombia, in fact, police and judicial officials who tried to carry out their duties were liable to similar fates.

70. In the Philippines, trade union activists were often murdered by paid killers or paramilitary groups. In Thailand, trade union leaders were subject to arbitrary arrest and trade union activity was prohibited.

71. While some progress had been made towards restoring trade union rights in Turkey, many persons had been arbitrarily deprived of their nationality because of their opinions. Moreover, Kurdish political prisoners were still subject to prison and to torture. His organization regretted that the question of the human rights of the Kurdish people was not treated with the same seriousness as the human rights of other national groups.

72. In Indonesia, trade unionists, like thousands of other people, had been detained in concentration camps and many of them executed.

73. In view of the situation throughout the world, it was important that the Commission should approve the draft Declaration on the protection of all persons from enforced disappearance. In that connection, his organization considered that the original text of article 14, as previously adopted by the Sub-Commission, should be retained.

74. Turning to the question of freedom of opinion and of expression, he noted that many countries continued to ban persons from the civil service on the basis of their opinions. In Germany, the campaign of decommunization was being undertaken in such a way as to jeopardize the freedom of opinion in general. Similarly, the Czech and Slovak Federal Republic had passed a law sanctioning all civil servants in any position of responsibility who had been members of the Communist Party or its militia from 1948 onwards. His own organization was threatened with suspension of activities in and expulsion from that country. He thus urged the Commission to recognize the importance of protecting NGOs against acts of arbitrary interference by Governments so that they could pursue their activities in freedom and independence.

75. Mr. RYDER (International Confederation of Free Trade Unions), speaking on behalf of the International Federation of Journalists (IFJ), said that, while 1991 had been a very good year for democratic change, it had been a murderous year for journalists, 84 of them having been killed while on assignment in 23 countries. New international action was needed to curb the growing wave of violence against journalists and, unless Governments showed greater respect for independent journalism and guaranteed press freeedom, there would be strongly negative consequences for democratic life.

76. IFJ actively supported the work of all United Nations agencies in their efforts to develop free and independent media systems around the world. It had played a leading role in the organization of the UNESCO seminar at Windhoek in 1991. That meeting had focused on the need to develop democratic media structures in Africa and the participants had asked the General Assembly of the United Nations to declare censorship a grave violation of human rights. The seminar had also called upon African Governments to release journalists who had been jailed for their professional activities. It had also adopted a list of specific projects to foster the development in Africa of a free and pluralistic press consisting of journalists and publishers affiliated to independent trade unions, since freedom of opinion and expression required a quality press staffed by trained journalists working in decent moral and material conditions.

77. There was no conflict of interest between trade unionism and professional journalism, since there could be no genuinely free press if journalists or other media workers worked in conditions of poverty and technological deprivation.

78. The time had come to consider whether there was a need for a new and democratic media culture which would give practical and concrete meaning to international declarations and commitments to freedom of opinion and expression. Such a culture would need to identify the necessary conditions

for the exercise of those freedoms, including: a proper commitment to openness and the free flow of information through freedom of information legislation; a recognition of the "people's right to know" and guarantees of citizens' rights of access to sources of information; and the establishment and maintenance of a free and pluralistic press, independent of both direct and indirect governmental, political or economic control.

79. Such independence should also include the protection of journalists from the internal pressures which often led to self-censorship, the most pervasive and corrosive of all forms of censorship.

80. Regrettably, those minimum conditions existed in very few countries of the world. IFJ had recently sent fact-finding missions to a number of countries and had determined that, in each of them, press freedom had been compromised and freedom of expression denied. Greater progress was needed in the development of multiparty democracy, which alone provided the climate in which an independent and pluralistic press and a new democratic media culture could emerge. More specifically, existing international instruments governing the rights of people in wartime needed to be strengthened to protect journalists.

81. During the civil war in Yugoslavia, for example, 21 journalists had been killed while several others were reported missing. IFJ was very concerned at suggestions that journalists had been particularly targeted during that conflict. Indeed, during the previous 12 months, wherever there had been social and political struggle, journalists had been the victims of those who wished to control and manipulate information to suit their own interests.

82. A specific study should be undertaken to analyse and define minimum conditions for the exercise of journalism in areas of conflict. There were some areas in which democratic values had no weight at all. In Latin America, for example, journalists were under attack from drug gangs, paramilitary forces and terrorists and, during the previous year, 22 journalists had been killed there.

83. In response to the escalating violence, IFJ had sought to apply pressure on Governments to take responsibility for their international commitments to the physical welfare of journalists. In Peru, IFJ was currently negotiating with the Government to come to an acceptable arrangement for the independent investigation of all attacks on journalists in that tragically divided country.

84. It was quite difficult, however, to get Governments to fulfil their obligations and responsibilities, since the procedures for making complaints and for submitting cases to the international tribunals were time-consuming and complex, and allowed uncooperative Governments opportunities to evade their responsibilities through technicalities Such a situation should not be acceptable in an accountable and democratic world, and there was need for substantial reform of the United Nations human rights apparatus in order to improve the overall effectiveness of the machinery and to make the system as accessible and as transparent as possible.

85. Journalists themselves had a collective responsibility to ensure the highest standards of professionalism and solidarity in the current difficult times. Accordingly, IFJ had recently launched a worldwide humanitarian aid project - the IFJ Safety Fund - to provide humanitarian aid to journalists and their families who were victims of violence anywhere in the world. For many journalists, the issue of freedom of opinion and expression was not an intellectualized concept but a matter of life and death.

86. Mr. PAZ (Indian Council of South America), speaking in his capacity of Chairman of the Bolivian Permanent Assembly of Human Rights, drew attention to the prosecution in Bolivia of Luis García Meza, who had exercised dictatorial powers in that country in the period 1980-1981. The proceedings, which also involved 55 of the ex-dictator's former collaborators, were of concern to the Commission and the item under consideration in that the offences of which he was accused included not only violations of the Constitution and actions against the economy of the State but also murders and massacres.

87. The pre-trial proceedings brought before the National Parliament in February 1984 had been fraught with political and technical difficulties, the former due to a prevailingly conservative atmosphere in the country, and the latter to the lack of an applicable criminal procedure. However, the case had in due course been passed to the Supreme Court.

88. The Attorney-General of the Republic was acting as prosecutor and, on the civil side, a number of organizations had combined together to establish a Committee to ensure the apportionment of liabilities, of which he himself was the Chairman. The brunt of preparing the accusations and collecting the evidence had fallen upon that Committee in view of the lack of action by the Attorney-General's office. It had concentrated upon the charges of breaches of the Constitution and murders and massacres.

89. Despite the lengthy nature of the procedure, the evidential stage was nearing its end and the trial proper was expected to begin in March 1992. The ex-dictator and many of his collaborators would, however, be tried in absentia, since they had fled the jurisdiction in 1989.

90. Throughout, the case had illustrated the need not only for political will at the governmental level but also what could be done by the Bolivian human rights bodies, other NGOs and political parties, with international support. It had thus, despite all the frustrations involved, marked a turning-point in the affirmation of judicial independence and the strengthening of democracy in his country.

91. Ms. ABRASH (International Human Rights Law Group) said that, as an organization that mobilized the skills of lawyers around the world to promote and protect human rights, the International Human Rights Law Group remained convinced that respect for human rights was most effectively guaranteed through an independently functioning judicial process. The education of judges and lawyers was as critical to that process as independent reporting on practices which strengthened or weakened judicial independence.

92. At its forty-third session, the Sub-Commission had endorsed the recommendations contained in the first report by Mr. Joinet on legal education, reporting on the independence of the judiciary, and protection of practising lawyers (E/CN.4/Sub.2/1991/30 and Add.1 to 4). The recommendations were intended to strengthen the advisory services and technical assistance programmes needed to conduct effective educational efforts in dozens of countries.

93. In Romania and Kenya, for example, where the winds of change heralded promises, as yet unfulfilled, of promoting the rule of law through the genuinely independent functioning of judges and lawyers, suitable programmes could facilitate the ability of judges to ensure due process in civil rights claims, and, in the case of Kenya, help judges to prevent the judicial process from being used against practising lawyers for the sake of political interests. Her organization thus urged the Commission to adopt the Sub-Commission's draft resolution authorizing a further report by Mr. Joinet (E/CN.4/1992/2, draft resolution VII).

94. Her organization wished to reiterate its support for the draft Declaration on the protection of all persons from enforced disappearance which, inter alia, established measures that States should adopt to prevent disappearances and, if they occurred, to ensure that those responsible were investigated and held accountable. The continuing prevalence of the phenomenon of disappearances in dozens of countries bore witness to the urgent need for an international instrument addressing States' obligations to respect and ensure such fundamental rights under article 2 of the International Covenant on Civil and Political Rights.

95. Closely linked to the prevention of disappearances and similar violations of fundamental rights was the right of habeas corpus, recognized in article 9, paragraph 4, of the International Covenant on Civil and Political Rights. The Inter-American Court of Human Rights had affirmed that habeas corpus performed a vital role in ensuring that a person's life and physical integrity were respected, and had stated that the right of habeas corpus could not be suspended, even in the case of a public emergency, since it constituted a judicial guarantee essential for the protection of rights whose suspension was explicitly prohibited under the American Convention. Her organization accordingly urged the Commission to adopt the Sub-Commission's draft resolution (E/CN.4/1992/2, draft resolution III) which called on all States to maintain the rights to habeas corpus at all times and under all circumstances, including states of emergency.

96. Lastly, her organization asked the Commission to establish an inter-sessional working group to examine the draft optional protocol to the Convention against Torture, proposed by the Government of Costa Rica, and to report its findings to the Commission at its next session. That draft protocol addressed a critical need for more effective ways to implement the overwhelming international consensus outlawing torture.

97. Ms. GUZMAN (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that her organization was all too well aware that the phenomenon of enforced or involuntary disappearances was widespread in Latin America and the Caribbean, and that it occurred on a large scale in

other countries throughout the world. The report of the Working Group contained in document E/CN.4/1992/18 - which had unfortunately been issued only in English - showed that the problem had not abated, and the statistics available to her organization indicated that, in the year 1991 and in Latin America alone, 145 persons had disappeared for political reasons in Guatemala, 65 in El Salvador, 49 in Peru, 180 in Colombia and one each in Mexico and Argentina. The Working Group itself recognized that the statistics were incomplete.

98. In view of the scale and persistence of the problem, her organization had long campaigned for the adoption of an international legal instrument to prevent such occurrences and to punish those responsible for them. However, the text of the draft Declaration, as amended by the Working Group (E/CN.4/1992/19/Rev.1), did not address the issue of the criminality of the offence - which should be categorized as a crime against humanity - with sufficient rigour or sufficient concern for the sufferings of the families involved.

99. The Council of Europe had determined (in its resolution 828) that enforced disappearance constituted a crime against humanity and that, consequently, it could not be regarded as a political offence and was therefore subject to extradition, that it was not subject to a statute of limitations or to amnesty, and that those responsible could be tried either in the country in which the offence was committed or in any other country in which they had been detained. Her organization fully agreed with those conclusions.

100. In view of the urgency of the situation, the Commission should approve the draft Declaration without delay and recommend it for adoption by the General Assembly.

101. Her organization, which agreed with the Working Group that States should ensure that their legislation was in keeping with the relevant international instruments, was in favour of the proposal for an optional protocol to the Convention against Torture.

102. In conclusion, she said that, in Latin America, the concept of national security had often been invoked, in the framework of the East-West confrontation, as a pretext for violating human rights. She hoped that the end of the cold war would signal not only a new emphasis on disarmament, but also the disengagement of the armed forces in various States from social and economic conflicts and a greater concentration of investment on such neglected areas as health and education.

103. Mr. Ennaceur (Tunisia) took the Chair.

104. Ms. ABOUL-EZZ (Observer for Egypt), speaking in exercise of the right of reply, said that concern had been expressed by the representative of Amnesty International at incidents of torture and ill-treatment alleged to have occurred in Egypt and supposed restrictions on freedom of expression there. In fact, however, a previous spokesman for Amnesty International had stated, following a visit to Egypt in 1990 in which he had received full cooperation from the authorities, that favourable progress had been made in respect of fundamental freedoms and rights in that country.

105. Egyptian law punished the crime of torture and provided for the prosecution of those responsible. In addition, the Government had established a compensation system for the victims of torture in 1986. Democracy had become more firmly entrenched, and there were no political detainees. There was a free press, and the right to opposition was fully guaranteed.

106. Her Government regarded freedom and security as inalienable rights, and it had accordingly acceded to the relevant international conventions and, in 1991, her delegation had participated actively in the deliberations of the Working Group on the Declaration on the protection of all persons from enforced disappearance.

107. Mr. AL-DOURI (Iraq), speaking in exercise of the right of reply, said that the statement made earlier by the observer for the Movement against Racism and for Friendship among Peoples was symptomatic of a concerted campaign of vilification against Iraq. By way of evidence to support her allegations of human rights abuses, she had produced, in the conference room, a severely injured child.

108. Everyone was aware that there were many such children in Iraq, but they also knew that the coalition forces had dropped hundreds of thousands of tons of bombs on his country, of which that child might well be one of the many victims. The emphasis should be on alleviating the sufferings of such children rather than on exploiting them for political capital.

The meeting rose at 12.55 p.m.